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THE RISE OF FREESTYLE TERRAIN: GETTING EXTREME AS AN INCREASED LIABILITY FOR SKI RESORTS

*Nick Armes**

INTRODUCTION

Today, almost every United States ski resort advertises freestyle areas containing jumps, rails, and boxes.¹ Freestyle areas are exponentially more dangerous than common skiable terrain,² and as a result, freestyle-related injuries are on the rise.³ Therefore, ski resorts utilizing freestyle areas may encounter an increase in negligence claims brought by injured skiers and snowboarders in the near future. However, a ski resort's stock defenses defeating negligence claims are ineffective against freestyle-related injuries. Courts may find that skiers and snowboarders simply cannot appreciate and assume freestyle terrain's often hidden, and increased dangers. Therefore, in order to guard against such adverse judgments, ski resorts housing freestyle terrain areas must prevent injury while simultaneously strengthening negligence defenses.

This note will discuss the increased liability ski resorts undertake when offering freestyle areas to skiers and snowboarders and propose a solution to limit this liability. Part one of this note discusses freestyle terrain's history, rise to mass appeal, and increased dangers. Part two explains ski resort negligence – the vehicle skiers and snowboarders use to hold ski resorts responsible for their injuries. Part three examines the four most common defenses ski resorts use to defeat negligence claims and analyzes why these defenses may not ap-

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1. U.S. Terrain Park Counsel, *History of Terrain Parks*, <http://usterrainparkcouncil.org/history.html> (accessed Oct. 1, 2011).

2. www.ski-injury.com, *Stay Safe Now: Injuries in Terrain/Fun Parks*, <http://www.ski-injury.com/terrainparks> (accessed Oct. 1, 2010).

3. Nat. Ski Area Assn., *Facts About Skiing/Snowboarding Safety*, <http://www.nsaa.org/media/68045/NSAA-Facts-About-Skiing-Snowboarding-Safety-10-1-12.pdf> (accessed Oct. 2, 2011).

ply to freestyle-related injuries. Part four purposes a three-point solution ski resorts should use to prevent injury and strengthen its common defenses. Finally, part five concludes by explaining how ski resorts utilizing all three proposed measures will help decrease adverse judgments ground in freestyle-related injuries.

I. BACKGROUND

Freestyle areas are recent developments in ski resort history.⁴ Freestyle skiing and snowboarding, once frowned upon activities, are today rapidly expanding.⁵ Many ski resorts are now installing freestyle areas to satisfy corporate and customer demands.⁶ Unfortunately, freestyle skiers and snowboarders are more likely to suffer serious injury.⁷ In fact, over twenty five percent of all ski resort injuries occur inside freestyle areas.⁸

A. *Freestyle Terrain – Past and Present*

Freestyle terrain is a ski area containing various foreign objects and fabricated snow conditions for skiers and snowboarders to jump, ride, and slide across.⁹ The most common features inside freestyle areas are boxes, half-pipes, jumps, and rails.¹⁰ Some ski resorts base freestyle area design on objects found inside skateboard parks and even urban city landscapes.¹¹ For example, Pennsylvania's Seven Springs Ski Resort showcases a freestyle area containing staircases, handrails, and concrete ledges.¹² Larger freestyle areas often contain exotic features including: jibs, bonks, and pole jams, which are non-snow objects serving as jumps.¹³ In fact, a leading East Coast ski resort boasted

4. U.S. Terrain Park Counsel, *supra* note 2.

5. U.S. Terrain Park Counsel, *supra* note 2.

6. See Mirjam Swanson, *Out There; Terrain of Their Own; The Park at Bear Mountain Keeps Snowboarders Coming Back with a Growing Array of Opportunities to Expand on Their Sport*, The Press Enterprise (California), Dec. 17, 2004.

7. See Nat. Ski Area Assn., *supra* note 4.

8. Alison Brooks, Michel Evans, and Frederick Rivara, *Evaluation of skiing and Snowboarding Injuries Sustained in Terrain Parks versus Traditional Slopes*, 16 Injury Prevention 2, 119, 119 (2010).

9. Terrain Park Safety, *Gen. Info.: Terrain Parks*, <http://www.terrainparksafety.org/index.php/freestyle-terrain-users-guide> (accessed Oct. 1, 2011).

10. *Id.*

11. Nicole Orne, *Putting the Mountain where Their Mouth Is*, Brattleboro Reformer (Vermont), July 7, 2008.

12. Seven Springs, *The Streets*, <http://7springs.com/page/category.detail/nav/5696/About-The-Streets.html> (last visited Jan. 20, 2012).

13. Swanson, *supra* note 7.

that its freestyle area contained “anything you can haul out of a junk yard . . . and set up on the mountain.”¹⁴

Freestyle areas are new developments in the ski resort timeline.¹⁵ Until very recently, ski resorts outlawed any type of “on-hill jump” or man-made object placed in the snow.¹⁶ Despite this prohibition, freestyle rumblings surfaced in the 1960’s when skiers secretly built “small bumps [or moguls] of snow in an effort to get air-borne.”¹⁷ Ski resorts tagged these skiers as “hot-doggers” because of their aggressive ski style, which included skiing moguls, small jumps, and “ski ballet.”¹⁸ Eventually, “hot-dogging” moved away from its rebellious freestyle beginnings and into mogul and slight aerial maneuvering.¹⁹ This type of freestyle skiing is now an Olympic event, but the area design for these skiers is not the freestyle terrain most ski resorts use today.²⁰

Freestyle terrain re-surfaced following snowboarding’s rise in popularity during the early 1980’s.²¹ Initially, ski resorts were hostile to snowboarding because it viewed snowboarders as rebels encroaching on a skier-controlled industry.²² Moreover, ski resort operators banned snowboarders from resorts²³ because they believed “snowboards ruined the slopes and made the terrain unsuitable for skiing.”²⁴ Nevertheless, snowboarding continued to grow, as downhill skiing’s popularity faltered.²⁵ For example, a 1988 study highlighted twelve million people regularly participated in downhill skiing, while a 2004 study revealed less than seven and a half million people continue to downhill ski.²⁶ Snowboarding participation, on the other hand, has spiked over 300 percent since 1988.²⁷ Ski resorts eventually permitted

14. Orne, *supra* note 12.

15. See U.S. Terrain Park Counsel, *supra* note 2.

16. See U.S. Terrain Park Counsel, *supra* note 2.

17. See U.S. Terrain Park Counsel, *supra* note 2.

18. CBC Natl. Post, *Vancouver Now: Freestyle Skiing History*, <http://www.cbc.ca/olympics/history/story/2009/11/25/spo-sport-history-freestyleskiing.html> (accessed Oct. 1, 2011).

19. *Id.*

20. *Id.*

21. U.S. Terrain Park Counsel, *supra* note 2.

22. Joshua D. Hecht, Student Author, *Snowboarding Liability: Past, Present, and Future*, 15 Marq. Sports L. Rev. 249, 250 (2004).

23. Sarah Lemon, *Skiers vs. Snowboarders, Once –heated Controversy on the Slopes Seems to Have Melted*, Mail Tribune (Oregon) (2009).

24. Hecht, *supra* note 23, at 250.

25. Mark Clothier, *Snowboarding: the Latest Thing Going Down*, http://articles.cnn.com/2004-01-21/travel/sprj.ski04.snowboarding_1_snowboarding-halfpipe-snowsports-industries-america?_s=PM:TRAVEL (last visited Oct. 1, 2011).

26. *Id.*

27. *Id.*

snowboarding, pushing it to consume “almost fifty percent of all winter activity.”²⁸ Today, only Mad River Glen in Vermont, and Alta Ski Resort and Deer Valley in Utah still prohibit snowboarding.²⁹

Snowboarders brought an aggressive new style to the snow.³⁰ Surfers and skateboarders journeyed to snow-covered mountains in the winter and brought their tricks and stunts to the slopes.³¹ Jumps became increasingly popular, and ski resorts adapted to this mindset as a new way to attract business.³² Freestyle areas soon became a simple supply and demand function for ski resorts.³³ One commentator even proclaimed, “nothing could stop the rise in the sport’s popularity.”³⁴ Indeed, freestyle skiing and snowboarding are now “the heart and soul” of the Winter Olympics.³⁵ For example, the 2010 Winter Olympics opened with a freestyle snowboarder jumping through the Olympic rings.³⁶ Such popularity has also garnered massive corporate sponsorship.³⁷ Companies like Pepsi, Nike, and even Nissan now harness freestyle skiing and snowboarding’s marketing power.³⁸ In fact, some companies are even contracting with ski resorts to sponsor entire freestyle areas.³⁹

Today, almost every ski resort advertises freestyle terrain, with many claiming to have “the biggest, most amazing park in the country.”⁴⁰ Technological advances and creative design schemes allow ski resorts to utilize “any obstacle imaginable” producing a plethora of freestyle terrain.⁴¹ In fact, some ski resorts cater solely to freestyle skiers and snowboarders.⁴² For example, the Mount Snow Corpora-

28. Hecht, *supra* note 23, at 250.

29. Ethan Demby, *Mountain info 101: Which Ski Resorts Ban Snowboarding?*, <http://www.examiner.com/recreation-101-in-national/mountain-info-101-which-ski-resorts-ban-snowboarding> (last visited Jan. 20, 2012).

30. Clothier, *supra* note 26.

31. Clothier, *supra* note 26.

32. U.S. Terrain Park Counsel, *supra* note 2.

33. Swanson, *supra* note 7.

34. Kevin Fylan, *Olympics-Snowboarding-Extreme Dudes now Life of Games*, Reuter News, Feb. 17, 2010.

35. *Id.*

36. *Id.*

37. David Horton, *Extreme Sports and Assumption of Risk: A Blueprint*, 38 U.S.F. L. Rev. 599, 603 (2004).

38. Colin Grimshaw, *Sports Marketing: Living Dangerously-It is not Always the Advertisers You Would Normally Expect that are Trying to Associate Themselves with Extreme Sports*, <http://www.campaignlive.co.uk/news/142392/> (last visited Jan. 21, 2012).

39. See Whistler Blackcomb, *Nintendo Terrain Parks*, <http://www.whistlerblackcomb.com/parks/index.htm> (last visited Jan. 21, 2012).

40. U.S. Terrain Park Counsel, *supra* note 2.

41. U.S. Terrain Park Counsel, *supra* note 2.

42. See Orne, *supra* note 12.

tion dedicated a ninety-five acre mountain face to freestyle terrain, making it the East Coast's largest freestyle area.⁴³ In addition, freestyle terrain no longer only attracts surfers and skateboarders looking for a winter hobby.⁴⁴ Ski resorts market freestyle areas as offering something for everyone by providing "various skill level areas" ranging from "beginner, or extra small, to difficult, or extra large."⁴⁵ For example, Bear Mountain, a California ski resort, advertises a "skill builder park" containing small jumps, short boxes, and rails only eight to ten inches high.⁴⁶ Bear Mountain's skill builder park further welcomes new skiers and snowboarders with signs instructing them how to approach and ride certain features.⁴⁷ To satisfy seasoned riders, Bear Mountain offers advanced freestyle areas including a thirty-two foot handrail and twelve to eighteen feet deep half pipes.⁴⁸ Basically, since the early 1990's, freestyle areas have gotten "bigger and better every year."⁴⁹

B. Injuries On and Off Freestyle Terrain

Freestyle areas aside, injury always follows skiing and snowboarding.⁵⁰ The National Ski Area Association (NSAA) reports an average of 44.7 serious injuries and 41.5 ski and snowboard deaths each year.⁵¹ The NSAA compares this rate to 59.8 million skiers and snowboarders on the slopes equating a .64 per million death or serious injury risk.⁵² However, the NSAA study does not cover injury's entire realm because it defines injury as accidents resulting in substantial paralysis, major head trauma, "or other serious injuries."⁵³ A corresponding university study, reviewing ski and snowboard injuries for three decades, highlights over 15,000 injuries occurring on the slopes each

43. See Orne, *supra* note 12.

44. Clothier, *supra* note 26.

45. Orne, *supra* note 12.

46. Bear Mountain, *Skill Builder Park*, <http://www.bearmountain.com/snowboard/the-park/skill-builder-park/> (last visited Oct. 2, 2011).

47. *Id.*

48. *Id.* at <http://www.bearmountain.com/snowboard/the-park/freestyle-park/> (last visited Jan. 20, 2012).

49. Scott Willoughby, *Colorado Ski Resorts Alter Approach as Baby Boomers Fade Away*, Denver Post, Dec. 8, 2009.

50. Nat. Ski Area Assn., *supra* note 4.

51. Nat. Ski Area Assn., *supra* note 4.

52. Nat. Ski Area Assn., *supra* note 4.

53. Nat. Ski Area Assn., *supra* note 4.

year.⁵⁴ Some reported injuries are minor, but others fall just below the NSAA standard.⁵⁵

Freestyle-related injuries are included in these studies, but deserve special consideration due to their frequency⁵⁶ and seriousness.⁵⁷ Injuries resulting from freestyle areas have increased over the past ten years.⁵⁸ Snowboarding⁵⁹ injuries have increased from 3.37 to 6.97 per every 1,000 visits.⁶⁰ A recent study shows that twenty seven percent of all U.S. ski resort injuries occur inside freestyle areas.⁶¹ Injuries from freestyle terrain are also “more likely to be severe in nature.”⁶² The most common freestyle-related injuries are joint dislocations, and internal injuries to the chest, head, and spine.⁶³ Additionally, ACL injuries occur more frequently in freestyle snowboarders than in simple downhill riders.⁶⁴ These injuries are in sharp contrast to wrist and lower arm injuries suffered by non-freestyle skiers and snowboarders.⁶⁵

The most risk-prone freestyle feature is the jump, or “lip” onto boxes and rails, because airborne skiers and snowboarders have no control over where they are going.⁶⁶ Jumps increase injury because riders fall from a projected height,⁶⁷ which heightens the risk of inverted landings and direct head and neck impacts.⁶⁸ In addition, jumps contain extensive variables including take off and landing angles, snow condition, and aerodynamic drag.⁶⁹ These variables are becoming even more intricate as ski resorts rush to comply with the ever-increasing customer demand to produce bigger and more complex jump lines.⁷⁰ For example, Mammoth Mountain, a California ski

54. Sarah Tuff, *Safety on the Slopes: Easy to Say but Harder to Ensure*, N.Y Times, Mar. 2, 2006.

55. *Id.*

56. See Nat. Ski Area Assn., *supra* note 4.

57. See www.ski-injury.com, *supra* note 3.

58. Nat. Ski Area Assn., *supra* note 4.

59. See Nat. Ski Area Assn., *supra* note 4. Snowboards are the most common equipment used in freestyle areas.

60. Nat. Ski Area Assn., *supra* note 4.

61. Brooks, Evans, and Rivara, *supra* note 9.

62. www.ski-injury.com, *supra* note 3.

63. www.ski-injury.com, *supra* note 3.

64. www.ski-injury.com, *supra* note 3.

65. www.ski-injury.com, *supra* note 3.

66. Tuff, *supra* note 55.

67. Brooks, Evans, and Rivara, *supra* note 9.

68. www.ski-injury.com, *supra* note 3.

69. www.ski-injury.com, *supra* note 3.

70. U.S. Terrain Park Counsel, *supra* note 2.

resort, offers freestyle areas featuring sixty to eighty foot jumps.⁷¹ Essentially, skiers and snowboarders using these jumps become “ballistic missile[s]” destined to fall.⁷²

Freestyle areas in particular pose an increasingly hazardous risk because helmets are useless at preventing head and neck injuries.⁷³ Ski resort helmet usage, required or voluntary, is increasing each year by about five percent.⁷⁴ Today, about thirty-two percent of skiers and snowboarders wear helmets, reducing injury thirty to fifty percent.⁷⁵ However, this reduction, is limited to minor scalp lacerations, contusions, mild concussions, and other minor injuries that are less likely to occur inside freestyle areas.⁷⁶ In fact, increased helmet usage has not decreased ski resort fatality rates.⁷⁷ In freestyle areas especially, helmets ineffectively protect against neck compression and high-risk inverted landings.⁷⁸ The neck, or spinal cord, is “very susceptible to injury even at low drops.”⁷⁹ One study revealed compression loads caused by even minor inverted landings yielded pressure “well above the level associated with cervical spine fracture.”⁸⁰ Freestyle crashes simply overwhelm a helmet’s ability to prevent death or serious paralysis.⁸¹

II. SKI RESORT NEGLIGENCE⁸²

Injured skiers and snowboarders often sue ski resorts for negligence, which is “the failure to exercise the degree of care demanded by the circumstances.”⁸³ Injury alone does not establish ski resort negligence.⁸⁴ Instead, injured skiers and snowboarders holding ski resorts responsible must prove: (A) a ski resort owed the skier or snowboarder a specific duty and breached this duty (B) the breach

71. Mammoth Mountain, *The Unbound Terrain Parks at Mammoth Mountain-7 Parks World Famous*, <http://www.mammothmountain.com/MountainActivities/PipesandParks/Parks/> (last visited Oct. 2, 2011).

72. Tuff, *supra* note 55.

73. See www.ski-injury.com, *supra* note 3.

74. Nat. Ski Area Assn., *supra* note 4.

75. Nat. Ski Area Assn., *supra* note 4.

76. See www.ski-injury.com, *supra* note 3.

77. See www.ski-injury.com, *supra* note 3.

78. See www.ski-injury.com, *supra* note 3.

79. See www.ski-injury.com, *supra* note 3.

80. See www.ski-injury.com, *supra* note 3.

81. Nat. Ski Area Assn., *supra* note 4.

82. Negligence is a state controlled issue. However, this note discusses freestyle liabilities on a national level. Therefore, negligence principles and defenses are cited from various state cases and statutes.

83. 57A Am. Jur. 2d *Negligence* § 5 (LEXIS current through 2011).

84. 57A Am. Jur. 2d *Negligence* § 71 (LEXIS current through 2011).

caused the skier or snowboarder's injury; and (C) the skier or snowboarder suffered actual harm.⁸⁵

A. Duty and Breach

Duty is the standard of care that "a prudent person should use under" similar circumstances.⁸⁶ Bright line duties are non-existent because courts determine duty "as a matter of fact."⁸⁷ The prudent person is also non-existent because the definition of a prudent or reasonable person is unique based on the specific circumstances present before the parties.⁸⁸ The prudent person stands in another's place under the exact circumstances, but recognizes and takes the actions necessary to prevent an "unreasonable risk of harm."⁸⁹ Courts may find a breach of duty when ski resorts fail to act as a prudent or reasonable entity.⁹⁰ However, ski resorts do not have to prevent every possible injury because this, itself, is unreasonable.⁹¹ Liability depends on the amount of care needed to prevent injury, but no liability exists when a ski resort can only prevent the injury by exerting extraordinary care.⁹² Courts focus on the injury's probability, seriousness, and the burden in preventing it.⁹³ Breach occurs when the injury's probability and seriousness, taken together, outweigh the precautions needed to prevent it.⁹⁴ For example, courts find ski resort negligence when a hidden rock seriously injures a skier if the ski resort could have prevented the injury by simply posting a warning.⁹⁵

B. Cause

A ski resort's act or omission must cause a skier or snowboarder's injury because even the most flagrant carelessness cannot result in liability if causation is lacking.⁹⁶ Causation is a two-part test requiring cause in fact and proximate cause.⁹⁷ Cause in fact, or "but for" cause, examines whether an injury would have occurred "but for" another's

85. *See Id.*

86. 57A Am. Jur. 2d *Negligence* § 132 (LEXIS current through 2011).

87. *Id.*

88. *Id.*

89. Restatement (Second) of Torts § 298 (1975).

90. *See Moore v. Va. Transit Co.*, 50 S.E.2d 268, 171 (Va. 1948).

91. *See Long v. Louisville & Nashville R.R. Co.*, 107 S.W. 203, 205-06 (Ky. 1908).

92. *U.S. v. Carroll Towing*, 159 F.2d 169, 173 (2d Cir. 1947).

93. *Id.*

94. *Id.*

95. *Codd v. Stevens Pass, Inc.*, 725 P.2d 1008, 1111-12 (Wash. App. Div. I 1986).

96. *See Lyons v. Midnight Sun Transp. Serv.*, 928 P.2d 1202, 1204 (Alaska 1996).

97. 57A Am. Jur. 2d *Negligence* §§ 415, 417 (LEXIS current through 2011).

act or omission.⁹⁸ Proximate, or legal, cause determines whether an injury occurs as a “direct and natural sequence . . . unbroken by intervening, efficient causes.”⁹⁹ Proximate cause pushes causation beyond “the realm of mere conjecture, or speculation, and into the realm of legitimate inference.”¹⁰⁰ The injury must be foreseeable to result from the act or omission standing alone.¹⁰¹ Courts examine the injury’s foreseeability by looking for any intervening or superseding actions breaking the causal chain.¹⁰² However, ski resorts are not freed from liability simply because its actions do not “directly and immediately cause” an injury.¹⁰³ Proximate cause still exists as long as a ski resort’s actions enact a “train of events” foreseeably leading to an injury.¹⁰⁴ Basically, liability hinges on whether the interim actions are an intervening and “foreseeable consequence” of the ski resort’s original action.¹⁰⁵ An intervening action only breaks a ski resort’s causal chain when it is extraordinary or “far removed” from the ski resort’s conduct.¹⁰⁶

C. Harm

Finally, skiers and snowboarders must show actual harm, or damages, from a ski resort’s act or omission.¹⁰⁷ Skiers and snowboarders typically show harm by highlighting specific bodily injuries.¹⁰⁸ Injured skiers and snowboarders can also show harm through physical pain, mental anguish, past and future medical expenses, and past and future lost earnings.¹⁰⁹ For example, skiers and snowboarders suffering disabling brain damage may seek recovery for the injury, itself, and the cost of future care.¹¹⁰ In addition, family members may seek recovery for skiers and snowboarders through wrongful death or survival statutes.¹¹¹

98. *Id.*

99. 57A Am. Jur. 2d *Negligence* § 417 (LEXIS current through 2011).

100. John R. Braley III & John R. Braley IV, *It's All Fun and Games Until Someone Gets Hurt: Tort Liability and Managing Recreational Activity Risk in Virginia*, 10 *Appalachian J.L.* 1, 5 (2010).

101. *Id.*

102. *Id.*

103. *Herman v. Markham Air Rifle Co.*, 258 F. 475, 77 (E.D. Mich. 1918).

104. *See Id.*

105. *See Derdarian v. Felix Contracting Corp.*, 414 N.E. 2d 666, 670 (N.Y. 1980).

106. *See Id.*

107. *See Braley III & Braley IV, supra* note 101, at 5.

108. *See Id.*

109. *See Id.*

110. *Hoar v. Great E. Resort Mgt., Inc.*, 506 S.E.2d 777, 779 (Va. 1998).

111. *See Steele v. Mt. Hood Meadows Or.*, 974 P.2d 794, 796 (Or. App. 1999).

III. DEFENSE INEFFECTIVENESS

Ski resorts are not helpless when defending against negligence claims.¹¹² Ski resorts often use certain defenses to relieve itself of responsibility.¹¹³ The most common defenses are: (A) contributory and comparative negligence, (B) assumption of risk, (C) skier statutes, and (D) waivers.¹¹⁴ If a ski resort proves these defenses, courts may leave skiers and snowboarders personally responsible for most, if not all, of their injury.¹¹⁵ However, courts may find these defenses are ineffective against freestyle-related injuries.

A. Contributory and Comparative Negligence

Contributory negligence is an affirmative defense holding skiers and snowboarders' own unreasonableness caused at least part of their injury.¹¹⁶ Essentially, ski resorts asserting contributory negligence claim a skier or snowboarder's own carelessness, however slight, contributed to the injury.¹¹⁷ Ski resorts must show the skier knew and appreciated a specific danger and failed to use reasonable care when encountering it.¹¹⁸ Successful contributory negligence defenses "act as a complete bar" against skiers and snowboarders recovery, regardless of ski resort involvement.¹¹⁹ Indeed, courts regard contributory negligence as an "all or nothing" defense.¹²⁰

Most states have replaced contributory negligence with comparative negligence,¹²¹ which apportions damages through fault percentages.¹²² Comparative negligence determines injured skiers' or snowboarders' unreasonableness, but does not simply release ski resorts from liability.¹²³ Instead, this doctrine reduces a skier's or snowboarder's damages by the percentage of their own negligence.¹²⁴ Comparative negligence falls into two general categories.¹²⁵ First, some states follow "pure comparative negligence," which awards injured skiers and

112. See Braley III & Braley IV, *supra* note 101, at 7.

113. *Id.*

114. Lori J. Henkel, *Ski Resort's Liability for Skier's Injuries Resulting from Condition of Ski Run or Slope*, 55 A.L.R. 4th 632, **2b,4-5 (1987) (accessed on LEXIS).

115. *Id.* at *2a.

116. Hoar, 506 S.E.2d at 787.

117. Braley III & Braley IV, *supra* note 101, at 7.

118. See 57B Am. Jur. 2d *Negligence* § 806 (LEXIS current through 2011).

119. 57B Am. Jur. 2d *Negligence* § 799 (LEXIS current through 2011).

120. Am. Agency Sys., Inc. v. Marceleno, 53 P.3d 929, 36 (Okla. Civ. App. 2002).

121. 57B Am. Jur. 2d *Negligence* § 955 (LEXIS current through 2011).

122. Baldwin v. City of Omaha, 607 N.W.2d 841, 53 (Neb. 2000).

123. 57B Am. Jur. *Negligence* § 954 (LEXIS current through 2011).

124. See Burton v. Barnett, 615 So. 2d 580, 82 (Miss. 1993).

125. 57B Am. Jur. *Negligence* §§ 962, 965 (LEXIS current through 2011).

snowboarders any damages caused by a ski resort.¹²⁶ For example, an injured skier or snowboarder can still recover one percent damages from a ski resort, despite the patron bearing ninety-nine percent of the responsibility for the injury.¹²⁷ Second, some states follow modified comparative negligence, which allows injured skiers and snowboarders to recover as long they are not more negligent than the ski resort.¹²⁸ Simply put, injured skiers and snowboarders cannot recover if they are fifty-one percent or more responsible for the injury.¹²⁹

However, contributory and comparative negligence may not shield ski resorts against claims resulting from freestyle-related injuries. Extremely dangerous or unreasonable terrain is no longer off limits to ski resort customers.¹³⁰ Instead, ski resorts across the country market freestyle areas as a family activity while ignoring injury's increased risk of seriousness.¹³¹ Ski resorts challenge skiers and snowboarders "to progress to higher levels," even proclaiming a "skier [or snowboarder] who doesn't fall is not really experiencing" the sport's thrill.¹³² Ski resorts may be unable to show skiers and snowboarders knew, appreciated, and acted unreasonably when encountering freestyle terrain.¹³³ Courts could completely deny these defenses considering freestyle terrain's enhanced dangers.¹³⁴ Skiers and snowboarders cannot simply encounter, immediately know, and appreciate a freestyle feature's dangers due to ski resorts' constant focus on "trying to woo the . . . crowd."¹³⁵

B. Assumption of Risk

Assumption of risk is an affirmative defense holding that a skier or snowboarder "who voluntarily assumes a risk of harm" stemming from a ski resort's negligent actions "cannot recover [thereafter] for such harm."¹³⁶ Courts consider skiing and snowboarding assumption of risk as a *volenti non fit injuria* defense, which means "to a willing

126. 57B Am. Jur. *Negligence* § 962 (LEXIS current through 2011).

127. *Id.*

128. 57B Am. Jur. *Negligence* § 965 (LEXIS current through 2011).

129. *Id.*

130. See Orne, *supra* note 12.

131. See Orne, *supra* note 12.

132. Arthur Frakt and Janna Rankin, *Surveying the Slippery Slope: The Questionable Value of Legislation to Limit Ski Area Liability*, 28 Idaho L. Rev. 227, 50 (1992).

133. See *Id.* at 245.

134. www.ski-injury.com, *supra* note 3.

135. Swanson, *supra* note 7.

136. See Restatement (Second) of Torts § 496A (1965).

person, no injury is done.”¹³⁷ Ski resorts must show skiers and snowboarders appreciated a known danger, voluntarily participated in the danger, and injury resulted from the danger.¹³⁸ Courts consider assumption of risk subjectively by examining each injured skier’s and snowboarder’s characteristics.¹³⁹ Specifically, courts evaluate a skier’s or snowboarder’s knowledge, understanding, and ability.¹⁴⁰ For example, advanced skiers and snowboarders assume a ski slope’s inherent risks when they encounter difficultly signs and notice others having trouble navigating the slope because of its conditions.¹⁴¹

Assumption of risk is a powerful defense that frees ski resorts from the “obvious and necessary” dangers inherent in skiing and snowboarding.¹⁴² Ski resorts simply have no duty to protect customers from skiing and snowboarding’s inherent or obvious dangers.¹⁴³ Courts emphasize before an injury occurs a skier or snowboarder makes a “logical . . . choice as to whether he should proceed . . . where a plainly apparent and necessary danger exists.”¹⁴⁴ Skiers and snowboarders are completely responsible in assessing a dangerous trail or area and determining if it is within their ability.¹⁴⁵ Essentially, courts reason that those skiers or snowboarders who believe a ski resort’s trails or areas are too dangerous “may stay at home.”¹⁴⁶

However, assumption of risk may not apply to freestyle injury because freestyle areas are not an open and necessary danger. Quite the contrary, ski resorts *owe patrons* a duty *not* to increase the sport’s inherent dangers.¹⁴⁷ Freestyle skiing and snowboarding is an “extreme sport,” which signifies it is “at odds with the duty not to increase inherent risks.”¹⁴⁸ Ski resorts offering freestyle areas make skiing and snowboarding “more dangerous” by installing foreign, man-made creations into the snow.¹⁴⁹ Courts may hold that skiers and snowboarders simply cannot fully assess the danger of an object made and used by a ski resort to intensify an already dangerous activity.

137. See Eric Feldman and Alison Stein, *Assuming the Risk: Tort Law, Policy, and Politics on the Slippery Slopes*, 59 DePaul L. Rev. 259, 67 (2010).

138. See Braley III & Braley IV, *supra* note 101, at 6.

139. See Braley III & Braley IV, *supra* note 101, at 5.

140. See Braley III & Braley IV, *supra* note 101, at 5.

141. *Smith v. Seven Springs Farm, Inc.*, 716 F.2d 1002, 1009 (3rd Cir. 1983).

142. *Wright v. Mount Mansfield Lift, Inc.* 96 F. Supp. 786, 791 (D. Vt. 1951).

143. *Horton*, *supra* note 38, at 610.

144. *Leopold v. Okemo Mt., Inc.*, 420 F. Supp. 781, 787 (D. Vt. 1976).

145. See *Id.*

146. See *Murphy v. Steeplechase Amusement Co.*, 166 N.E. 173, 174 (N.Y. 1929).

147. See *Schneider v. Erickson*, 654 N.W.2d 144, 152 (Minn. Ct. App. 2002).

148. See *Horton*, *supra* note 38, at 628.

149. See *Id.*

This is especially true when ski resorts make a “concerted effort to attract” beginner skiers and snowboarders into freestyle areas.¹⁵⁰ Indeed, the timid “no longer need to stay at home” when ski resorts are actively soliciting them.¹⁵¹

C. Skier Statutes

Skier statutes are assumption of risk codifications that protect ski resorts.¹⁵² All significant ski-industry states have skier statutes indemnifying ski resorts from liability when skiers “fall victim to” foreseeable injuries.¹⁵³ Each skier statute varies in length, detail, and specificity.¹⁵⁴ However, three general patterns have emerged among key ski-industry states.¹⁵⁵ First, some states announce that skiers and snowboarders “assume all obvious and necessary risks inherent in the sport.”¹⁵⁶ These statutes are simple and often reference assumption of risk principles verbatim.¹⁵⁷ For example, Vermont’s skier statute announces its policy governing ski injury claims is *violenti non fit injuria*.¹⁵⁸ Second, some states list specific inherent risks skiers and snowboarders cannot claim against ski resorts.¹⁵⁹ The second category still utilizes assumption of risk language, but often expands inherent risks to include aspects completely within a ski resort’s control.¹⁶⁰ For example, Utah’s skier statute holds that the inherent risks in skiing and snowboarding include changing conditions in weather, surface, and subsurface.¹⁶¹ Utah’s statute goes on to explain inherent risks also include terrain steepness, competitions, and special events.¹⁶² Lastly, some states simply identify the duties of ski resorts, and skiers and snowboarders.¹⁶³ These statutes are essentially negligence codifications mentioning assumption of risk.¹⁶⁴ Colorado’s skier statute, for instance, requires ski resorts to post “concise, simple, and pertinent” notices alerting skiers and snowboarders to upcoming

150. *Sunday v. Stratton Corp.*, 390 A.2d 398, 402 (Vt. 1978).

151. *Id.*

152. Feldman and Stein, *supra* note 139, at 278.

153. Frakt and Rankin, *supra* note 133, at 248.

154. Frakt and Rankin, *supra* note 133, at 248.

155. Feldman and Stein, *supra* note 138, at 278-79.

156. Feldman and Stein, *supra* note 138, at 278.

157. Feldman and Stein, *supra* note 138, at 278.

158. Vt. Stat. Ann. tit. 12, § 1037 (Lexis 2002).

159. Feldman and Stein, *supra* note 138, at 278.

160. Feldman and Stein, *supra* note 138, at 279.

161. Utah Code Ann. § 78B-4-402 (Lexis 2008).

162. *Id.*

163. Feldman and Stein, *supra* note 138, at 279.

164. Feldman and Stein, *supra* note 138, at 279.

dangerous terrain and man-made structures.¹⁶⁵ In addition, Colorado's statute requires skiers and snowboarders to maintain control, speed, and a proper lookout at all times.¹⁶⁶

Unfortunately, skier statutes are worthless in shielding ski resorts from freestyle-related injury. Every category of skier statutes encounters the same problems plaguing common law assumption of risk. The first category's simple statutory language immediately subjects it to assumption of risk problems. The other two categories, while designed to give ski resorts added protection, "have proven to be unfounded."¹⁶⁷ Courts simply disregard skier statutes, labeling them as "legislative efforts to immunize" ski resorts.¹⁶⁸ These statutes often use broad language seeking to incorporate every risk imaginable, but only add "a good deal of doctrinal" confusion.¹⁶⁹ Furthermore, skier statutes do not directly reference freestyle areas, and statutes attempting to do so could never include every possible terrain variation and obstacle. Skier statutes leave judges and juries with little, forcing them to revert into highly unpredictable risk allocations as if the pertinent skier statute never existed.¹⁷⁰

D. Waivers

Waivers are pre-injury releases stipulating that skiers and snowboarders accept liability for injuries caused by ski resorts.¹⁷¹ Ski resorts place waivers on the back of lift tickets making acceptance of terms binding upon the ticket's purchase.¹⁷² For example, Sugar Mountain, a North Carolina ski resort, stipulates on its lift tickets skiers and snowboarders "assume all risk of personal injury . . . as a result of all the inherent risks of skiing . . . whether they are marked or unmarked."¹⁷³ Courts enforce waivers after determining the agreement's effect on public policy, the drafter's control over the draftee, and each party's bargaining power.¹⁷⁴ Ski resort waivers are enforceable because skiing and snowboarding does not involve "economic or

165. Colo. Rev. Stat. §§ 33-44-101-114 (Lexis 2008).

166. *Id.* at § 33-44-109(2).

167. Feldman and Stein, *supra* note 138, at 281.

168. Feldman and Stein, *supra* note 138, at 281.

169. Frakt and Rankin, *supra* note 133, at 257.

170. *Est. of Frank v. Haystack Group, Inc.*, 641 A.2d 765, 771 (Vt. 1994).

171. Bruce Hronek and John Spengler, *Legal Liability in Recreation and Sports* 77 (2d ed., Sagamore 2002).

172. C. Connor Crook, *Validity and Enforceability of Liability Waivers on Ski Lift Tickets*, 28 Campbell L. Rev. 107, 09 (2005).

173. *Strawbridge v. Sugar Mt. Resort, Inc.*, 320 F. Supp. 2d 425, 29 (W.D.N.C. 2004).

174. *Chauvlier v. Booth Creek Ski Holdings*, 35 P.3d 383, 87 (Wash. Ct. App. 2001).

social necessities” essential to the public, and ticket users still retain control over his or her activities.¹⁷⁵

Nevertheless, waivers may not exonerate ski resorts from freestyle-related injuries. Courts are “reluctant to enforce” pre-injury releases because ski resorts independently draft them against skiers and snowboarders.¹⁷⁶ Courts also strictly construe waivers against ski resorts because the parties do not share equal bargaining power.¹⁷⁷ In fact, skiers and snowboarders often have no bargaining power and blindly accept a ski resort’s contractual terms.¹⁷⁸ Additionally, a ski resort cannot simultaneously protect itself from non-freestyle and freestyle-related injuries with the same waiver language. Oregon’s Mt. Hood Meadows, for example, used its lift ticket waivers to shield itself from injury claims resulting from skiing and snowboarding’s inherent risks and man-made objects.¹⁷⁹ Despite the ticket’s inclusion of both phrases, the court found “the ticket’s explicit focus on . . . inherent risks” led skiers and snowboarders to understand the waiver did not exclude injuries resulting from ski resort negligence.¹⁸⁰ Freestyle terrain only intensifies this problem because it is not an inherent risk of skiing and snowboarding.¹⁸¹ Therefore, courts have no option but to exclude freestyle areas from common lift ticket waivers.

IV. SOLUTION

Ski resorts are “on untouched trials” when defending against freestyle-related injuries.¹⁸² Ski resorts cannot wait until skiers and snowboarders file suit and simply hope a judge or jury finds no liability.¹⁸³ Instead, the best strategy to circumvent an adverse judgment is to avoid freestyle area litigation.¹⁸⁴ Ski resorts must take preemptive measures to prevent injury, while simultaneously strengthening negligence defenses.¹⁸⁵ Specifically, ski resorts should: (A) utilize freestyle area maintenance teams, (B) develop and openly post freestyle warnings and conduct codes, and (C) create unique freestyle area waivers.

175. See Braley III & Braley IV, *supra* note 101, at 12.

176. Crook, *supra* note 173, at 120.

177. Crook, *supra* note 173, at 112.

178. Crook, *supra* note 173, at 107.

179. Steele, 974 P.2d at 797 (Or. App. 1999).

180. *Id.*

181. See Horton, *supra* note 38, at 628.

182. Crook, *supra* note 173, at 121.

183. See Braley III & Braley IV, *supra* note 101, at 25.

184. See Braley III & Braley IV, *supra* note 101, at 23.

185. See Braley III & Braley IV, *supra* note 101, at 23-24.

A. Freestyle Area Maintenance Teams

Ski resorts should use freestyle area maintenance teams dedicated solely to supervising and maintaining freestyle areas. Ski resorts should hire or designate enough team members to ensure each freestyle area is constantly monitored. Specifically, each freestyle area should be accompanied by at least two maintenance team members. One member should maintain and test features for safety, and another should monitor activity and traffic. Two team members per freestyle area may seem like a burden because many ski resorts envision numerous terrain areas.¹⁸⁶ However, ski resorts can simply divide one large area into different freestyle zones, allowing team members to cover each area by patrolling the larger area top to bottom. In addition, larger resorts can equip team members with ski patrol style radios allowing them to pinpoint features requiring maintenance and high activity areas.

Ski resorts must also distinguish freestyle maintenance teams from other employees. To ensure safety, team members must actually ski or snowboard on freestyle features similar to ski resort customers. However, customers must be able to distinguish maintenance team members ensuring safety from other customers and non-freestyle area employees. Ski resorts can create this distinction by providing on-duty team members with identifying garments. For example, Steamboat ski resort in Steamboat, Colorado, provides its maintenance team with black pants and bright green coats embroidered with Steamboat's logo.¹⁸⁷ Ski resorts do not have to provide team members full uniforms because unique clothing items will suffice. For example, Ober Gatlinburg in Gatlinburg, Tennessee, provides its maintenance team with lower leg utility packs labeled with "Ober Gatlinburg Freestyle Terrain."¹⁸⁸

Lastly, ski resorts should supply freestyle maintenance teams with basic first aid training similar to ski patrol training. Team members should be trained in securing injured skiers and snowboarders, clearing take off and landing areas, and altering ski patrol to seek further medical help. Once again, more than one team member is crucial because one member should accompany ski patrol with the injured skier or snowboarder, and the other member should immediately inspect, maintain, and test the injurious feature. Ski resorts may also view first

186. Orne, *supra* note 12.

187. Steamboat Ski and Resort, *Steamboat Park Crew 2009-2010*, <http://www.steamboat.com/mountain/terrain-parks/crew.aspx> (last visited Jan. 9, 2012).

188. Ober Gatlinburg Ski and Amusement Park, *Skiing and Snowboarding: Ober Gatlinburg Freestyle Terrain*, <http://www.obergatlinburg.com/ski/terrain-park/> (last visited Jan. 9, 2012).

aid training for team members as an unnecessary burden. However, maintenance team members will often be the first ski resort employee to encounter injured skiers or snowboarders inside freestyle areas. Without proper first aid training, these resort employees will be unable to help and may even further harm an already injured skier or snowboarder. Essentially, freestyle maintenance team members without minimal first aid training must leave the injured behind or yell for help.

Freestyle area maintenance teams will keep ski resorts out of court by helping prevent injuries. Team members should inspect and maintain jumps and lips ensuring each are free from holes and ruts. In addition, team members should ensure each jump's take off and landing areas are leveled at appropriate angles. Team members should also inspect and maintain boxes, jibs, and rails removing any material obstructing a smooth, gliding surface. In doing so, a ski resort's freestyle features will be in the safest working condition.

Freestyle area maintenance teams strengthen contributory and comparative negligence because ski resorts can easily show an injured skier or snowboarder acted unreasonably. Ski resorts will be able to show it took reasonable measures ensuring its freestyle area's safety. While still challenging skiers and snowboarders, ski resorts housing maintenance teams can highlight that it encouraged freestyle progression in a safe, supervised environment. Maintenance team members enhance freestyle area's reasonableness by ensuring each feature is properly and safely maintained. Furthermore, maintenance team members' traffic and activity supervision ensures that skiers and snowboarders are safely using features. Taken together, these measures ensure a ski resort's reasonableness while leaving all unreasonable actions to skiers and snowboarders. Properly maintained freestyle features and increased supervision gives ski resorts added evidence to show a skier's or snowboarder's own contributory negligence. For example, ski resorts pursuing contributory negligence can more easily show that injured skiers or snowboarders were at least one percent responsible because the injurious freestyle feature was in the safest possible condition. The same argument, while not completely barring recovery, applies to pure and modified comparative negligence. At the least, ski resorts employing freestyle area maintenance teams can reduce the amount courts permit injured skiers and snowboarders to recover.

B. Freestyle Warnings and Conduct Codes

Ski resorts should actively post freestyle area-related warnings and conduct codes. Warnings should spell out the dangers involved when using freestyle areas, especially noting the increased risk of injury. Freestyle warnings should also notify participants of the features found inside the freestyle area and reference each features' general size.¹⁸⁹ Freestyle conduct codes should provide a step by step guide to using freestyle terrain. Essentially, conduct codes should instruct skiers and snowboarders before, during, and after using freestyle features. For example, the Smart Style conduct code outlines freestyle skiers and snowboarders should preemptively plan for each feature used, examine features before using them, master smaller features before attempting larger ones, and respect other skiers and snowboarders inside the freestyle area.¹⁹⁰

Ski resorts should post attention-grabbing, readable warnings signs and conduct codes in conspicuous areas to ensure that skiers and snowboarders will see and read them. Ski resorts should post these wherever skiers and snowboarders could access freestyle features, including entrances and chair lift lines. To fully ensure notice, ski resorts can create unique signs detailing the most common risk associated with each feature inside a freestyle area. Freestyle area maintenance teams can then determine where to place each specific sign to ensure minimum obstructions and maximum visibility. At the least, ski resorts should place warnings and conduct codes at every freestyle area's entrance.

Freestyle warnings and conduct codes enhance contributory and comparative negligence because skiers and snowboarders are now more likely to know and appreciate freestyle terrain's dangers. Despite ski resorts' enticing advertising,¹⁹¹ warnings and conduct codes will notify skiers and snowboarders of freestyle terrain's hidden dangers. Contributory and comparative negligence will be more feasible when freestyle areas become more reasonable, or when ski resorts provide adequate warnings and proper conduct. In fact, warnings and conduct codes could be the very last thing a future injured skier or snowboarder encounters before attempting a freestyle feature.

In addition, freestyle warnings and conduct codes strengthen assumption of risk because ski resorts are indicating to skiers and snowboarders that freestyle areas are not an inherent risk and are

189. See *Terrain Park Safety* *supra* note 2.

190. *Id.*

191. See *Orne*, *supra* note 12.

more dangerous than typical skiing and snowboarding. Ski resorts using warnings and conduct codes create a zone of dangerous activity separate from skiing and snowboarding's inherent risks. Warnings and conduct codes force participants to assess a freestyle area's dangers and allow them to make a conscious decision before entering. Ski resorts can still entice beginner skiers and snowboarders to freestyle areas, but warnings and conduct codes force them to enter at their own risk. Indeed, the timid no longer need to stay at home, but they are also no longer clueless to a freestyle area's increased dangers.

C. Freestyle Area Waivers

Ski resorts should also develop unique freestyle area waivers focusing on increased dangers. They should develop two visibly different lift tickets that feature different waivers on each. One waiver should detail skiing and snowboarding's inherent risks, and the other should highlight freestyle terrain's added risks. Lift ticket vendors should sell the differing tickets, at the same price, to skiers and snowboarders depending on what terrain they choose to use. Vendors should then ask freestyle ticket purchasers to read and sign the attached waiver. Finally, freestyle area maintenance members should then ensure each skier and snowboarder inside the freestyle area has the appropriate ticket. Resorts can thereafter deny non-freestyle area ticket holders access to freestyle areas. However, freestyle tickets holders should have access to all areas because freestyle tickets, while focusing on increased risk, impliedly include inherent risks.

The burden in using two lift tickets is minimal compared to utilizing other freestyle waiver forms. An alternative to freestyle lift tickets is a unified lift ticket detailing inherent risks and separate freestyle waivers. Essentially, every participant purchases the same lift ticket, but those using freestyle areas must read and sign a separate waiver. Ski resorts then keep the freestyle waiver on file. However, separate freestyle waivers will clog ski resorts in two ways. First, lift ticket vendors will be forced to ensure every skier and snowboarder wanting to use freestyle areas has read and signed a waiver before getting a lift ticket. Second, lift ticket vendors will be responsible for the daily filing of freestyle waivers. These new responsibilities detract vendors from actually selling lift tickets, which could potentially disrupt daily ski resort profit. Ski resorts will be forced to create more administrative space, and even new departments, to simply store freestyle waivers. Furthermore, separate waivers do nothing to help prevent injury because freestyle area maintenance teams will be powerless in preventing uninformed skiers and snowboarders from entering the

area. On the other hand, freestyle lift tickets do not detract from selling lift tickets because the vendor is simply selling a different ticket. Ski resorts need no extra space because the ticket's purchaser carries the ticket and waiver. Lastly, freestyle lift tickets help prevent injury because maintenance team members can limit the number of skiers and snowboarders inside the freestyle area with a quick glance at a ticket.

Freestyle area waivers in lift ticket form strengthen contributory and comparative negligence and assumption of risk. Similar to warnings and conduct codes, freestyle waivers signal to skiers and snowboarders a freestyle terrain's increased dangerousness. Freestyle waivers force skiers and snowboarders to consent to these dangers by requiring a signed lift ticket before gaining access to freestyle areas. In addition, freestyle waivers represent a skier and snowboarder's first and last notice. For example, customers choosing to use freestyle areas first must read and agree to its increased dangers when purchasing a freestyle lift ticket. They will then read about freestyle terrain's increased dangers from warnings and conduct codes when physically entering freestyle areas. Once inside, they will encounter more warnings and conduct codes describing specific features. Finally, they can choose to read about increased dangers at anytime because their waiver is attached to their lift ticket. Basically, freestyle waivers represent a complete seal to understanding, appreciating, and assuming freestyle terrain's increased risks.

Freestyle area waivers attached to lift tickets also breathes new life into pre-injury releases because ski resort customers now have bargaining power. With two equally priced lift tickets, skiers and snowboarders are free to reject a ski resort's contractual terms. Resorts no longer force skiers and snowboarders to impliedly consent to freestyle terrain's increased dangers when purchasing tickets to use other skiable terrain. Instead, non-consenting skiers and snowboarders can simply reject freestyle terrain's increased risks by not purchasing freestyle lift tickets and not using freestyle areas. In addition, ski resorts using two separate lift ticket waivers do not attempt to group non-freestyle and freestyle injuries under the same waiver language. Courts are no longer forced to automatically exclude freestyle-related injuries from ski resort waivers. Indeed, ski resorts using freestyle waivers on lift tickets can provide courts with a waiver specifically covering freestyle terrain's non-inherent, increased risks.

V. CONCLUSION

Ski resorts containing freestyle areas undoubtedly encounter more injuries than non-freestyle resorts. Consequently, ski resorts may face more negligence claims brought by injured skiers and snowboarders in the near future. Furthermore, the most common defenses used to combat ski resort negligence will likely prove ineffective when employed against freestyle-related injuries. Therefore, ski resorts must reduce its own risk of an adverse judgment by preventing injury and strengthening its common defenses. Those resorts housing freestyle areas should utilize freestyle area maintenance teams, warnings and conduct codes, and freestyle specific waivers. These measures, taken together, ensure skiers and snowboarders know, appreciate, and assume freestyle terrain's non-inherent, increased, and often hidden dangers. Indeed, ski resorts using these safeguards stand a better chance avoiding the hurtful "inherent risk of litigation."¹⁹²

192. Crook, *supra* note 173, at 121.

